

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

TERRELL DESHAUN PERRY

§

VS.

§

CIVIL ACTION NO. 5:08cv167

DIRECTOR, TDCJ-CID

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Terrell Deshaun Perry, an inmate confined at the Clements Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed without prejudice.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections are without merit and should be overruled.

Petitioner contends he did not file a motion to dismiss his petition for writ of habeas corpus before the Texas Court of Criminal Appeals. However, a review of the state court records reveals that, on June 13, 2006, petitioner filed a motion to dismiss his application for writ of habeas corpus,

writ no. 68,701-02, in which he asserted that he had received factual "finding(s) from the trial court which now compels him to seek dismissal of the writ without prejudice before this honorable court makes a final ruling on the writ." The writ was dismissed by the Texas Court of Criminal Appeals on July 30, 2008. Therefore, petition failed to exhaust state court remedies because the Texas Court of Criminal Appeals has not ruled on the issues presented in this petition, either through a petition for discretionary review or by petition for writ of habeas corpus. Accordingly, the respondent's motion to dismiss should be granted.

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. It is therefore

**ORDERED** that the respondent's motion to dismiss is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

**SIGNED this 8th day of February, 2010.**

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE